



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2005

Lieutenant Arturo Valdez  
City of McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2005-01014

Dear Lieutenant Valdez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 218098.

The McAllen Police Department (the "department") received a request for five specified incident reports. You state that some information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

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<sup>1</sup> We note that, by letters dated November 19, 2004, you sought two separate letter rulings from this office concerning this request for the five specified incident reports. This office received both of those requests for rulings on November 29, 2004. We have combined those two requests for a ruling and address all five incident reports in this letter ruling.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Incident report numbers 02-3867 and 04-38048, which we have marked, pertain to cases involving allegations of juvenile conduct that occurred after September 1, 1997. None of the exceptions in section 58.007 appear to apply. Therefore, incident report numbers 02-3867 and 04-38048 are confidential under section 58.007(c) of the Family Code and must be withheld in their entirety pursuant to section 552.101 of the Government Code.<sup>2</sup>

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident report numbers 03-51182, 03-23051, and 03-58644, which we have marked, relate to pending criminal investigations or prosecutions. Based upon this representation, we conclude that the release of incident report numbers 03-51182, 03-23051, and 03-58644 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an incident report is generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle*;

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<sup>2</sup> As our ruling is dispositive regarding these two incident reports, we need not consider your remaining claimed exception for these reports.

Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page incident report information from incident report numbers 03-51182, 03-23051, and 03-58644, even if this information is not actually located on the front page of the incident reports. Although section 552.108(a)(1) authorizes you to withhold the remaining information pertaining to incident report numbers 03-51182, 03-23051, and 03-58644, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, incident report numbers 02-3867 and 04-38048 are confidential under section 58.007(c) of the Family Code and must be withheld in their entirety pursuant to section 552.101 of the Government Code. Other than basic information, which must be released, you may withhold incident report numbers 03-51182, 03-23051, and 03-58644 under section 552.108 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

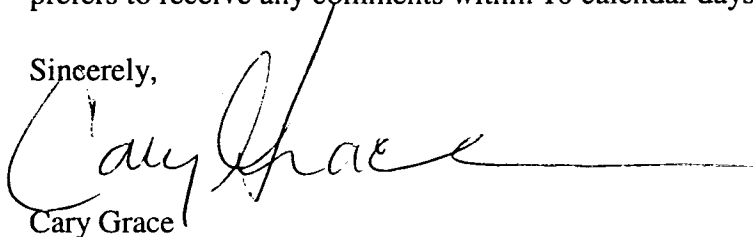
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cary Grace", followed by a horizontal line.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 218098

Enc. Submitted documents

c: Mr. Reynaldo J. Rivera  
HEB Grocery Company  
646 South Main  
San Antonio, Texas 78204  
(w/o enclosures)